

The Department of Community Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: August 9, 2006
Re: **Zoning Ordinance Amendments: Section 35.1-27, Nonconforming Uses.**

I. PETITIONER

City of Lynchburg, Planning Commission, 900 Church Street, Lynchburg, VA 24504
Representative(s): Tom Martin, AICP, City Planner, 900 Church Street, Lynchburg, VA 24504

II. LOCATION

The proposed amendments would effect the entire City.
Property Owner: N/A

III. PURPOSE

The purpose of the amendment is to keep the Zoning Ordinance current with requirements of the State Code. The amendment would provide that residential or commercial buildings destroyed by natural disasters to be repaired, rebuilt or replaced without the need to obtain a variance as required by the State Code.

IV. SUMMARY

- The proposed amendment would allow residential or commercial buildings destroyed by natural disasters to be replaced without the need of obtaining a variance.
- The proposed amendment would prohibit nonconforming buildings or structures from being moved to any other lot which is not properly zoned to permit such nonconforming use.
- Amendments are required by the State Code revisions effective July 1, 2006.

The Planning Division recommends adoption of the proposed Zoning Ordinance Amendments.

V. FINDINGS OF FACT

Comprehensive Plan. The Lynchburg *Comprehensive Plan* recognizes that the Zoning Ordinance has several structural and text problems. **(pg 5.10)** Ensuring that the Zoning Ordinance is current with State Code requirements will help but not eliminate these problems.

1. **Zoning.** The current Zoning Ordinance was adopted in 1978. Amendments to the Zoning Ordinance to ensure compliance with the State Code are needed on a periodic basis.
2. **Board of Zoning Appeals (BZA).** N/A
3. **Surrounding Area.** N/A
4. **Site Description.** N/A
5. **Proposed Use of Property.** N/A
6. **Traffic and Parking.** N/A
7. **Storm Water Management.** N/A

8. **Emergency Services.** N/A

9. **Impact.** The amendments would allow residential and commercial buildings destroyed by a natural disaster to be repaired, rebuilt or replaced without the need to obtain a variance. The amendment would allow for two (2) years for buildings to be repaired, rebuilt or replaced or when the building is located in an area under a federal disaster declaration a total of four (4) years. The amendments would also prohibit nonconforming buildings or structures from being moved to any other lot which is not properly zoned to permit such nonconforming use.

10. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDED MOTION(s):

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending Section 35.1-27, Nonconforming uses to ensure compliance with the State Code.

This matter is respectfully offered for your consideration.

William T. Martin

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Mr. J. Lee Newland, Director of Engineering
Capt. Michael L. Thomas, Fire Marshal
Lt. Danny R. Marks, Lynchburg Police Department Field Operations Bureau
Capt. Todd Swisher, Lynchburg Police Department North Division
Capt. J.P. Stokes, Lynchburg Police Department East Division
Capt. Al Thomas, Lynchburg Police Department South Division
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mrs. Erin B. Hawkins, Environmental Planner

VII. ATTACHMENTS

1. **Zoning Ordinance Amendment, Section 35.1-27, Nonconforming Uses**
2. **State Code, § 15.2-2307. Vested rights non impaired; nonconforming uses.**

Sec. 35.1-27. Nonconforming uses.

(a) Legislative intent. In the placing of zoning district regulations in the city's land through the zoning ordinance, there are a number of land uses and activities on the land which exist prior to the enactment of the zoning ordinance and which do not conform to the regulations herein. These nonconforming uses are, in most cases, incompatible with their surrounding uses, since the objective of district regulations is to permit compatible uses. Therefore, some limitations on the continued operation of nonconforming uses is appropriate in the public interest. While they are generally permitted to remain, the regulations herein restrict their further intensification or expansion and provide for their prohibition, if they are discontinued for a two (2) year period of time.

(b) Continuing existing uses. Except as otherwise provided in the zoning ordinance, the lawfully permitted use of land, buildings or structures existing at the time of the adoption of the zoning ordinance may be continued, although such use does not conform to the standards specified by this ordinance for the zone in which such land or building is located. Said uses shall be deemed nonconforming uses.

(c) Existing conditional uses. Any use lawfully existing at the time of the adoption of the zoning ordinance, or of any amendment thereto, in the district in which such use is classified herein as a conditional use, shall continue as a conditional use in such district.

(d) Completion of buildings under construction. Any building, the construction of which has been started pursuant to plans on file with the division of inspections and for which a lawful building permit was issued before the effective date of the zoning ordinance or of an amendment thereto, and the ground story framework of which, including the second tier of beams, has been completed within one (1) year after the adoption of this ordinance or amendment thereto, may be completed in accordance with said plans on file with the division of inspections; provided that such construction is diligently prosecuted and the building is completed within two (2) years of the adoption of the zoning ordinance.

(e) Nonconforming use of land with minor improvements. Where no building is involved, the nonconforming use of land with minor improvements may be continued; provided, however:

(1) That no such nonconforming use shall be enlarged or increased, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of the zoning ordinance, unless specifically allowed by other provisions in this ordinance.

(2) That no such nonconforming use be moved, in whole or in part, to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of the zoning ordinance and no nonconforming building or structure may be moved to any other lot which is not properly zoned to permit such nonconforming use.

(3) That if such nonconforming use of land, or any portion thereof, ceases for any reason for any continuous period of more than two (2) years or is changed to a conforming use, any future use of the land shall be in conformity with the provisions of the zoning ordinance.

(4) That no nonconforming use of land shall be changed to another nonconforming use.

(f) Nonconforming use of buildings and structures.

(1) Enlargements or extensions. A building or a structure, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged, extended, reconstructed or structurally altered, unless the use therein is changed to a conforming use or the use extended is a conforming use.

(2) Structural alterations. Such nonconforming building or structure shall not be reconstructed or structurally altered, unless such reconstruction or alterations are required by law; provided, however, that except in the case of billboards such maintenance and repair work as is required to keep a nonconforming building or structure in sound condition shall be in conformance with section 33.1-3702 of the Code of Virginia. In the case of billboards, any changes in the advertising message shall not be deemed an alteration.

(3) Change of use. If no structural alterations are made, any nonconforming use of a building or structure may, as a conditional use after public notice and hearing, be changed to another nonconforming use; provided that the planning commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally or more restrictive than the existing nonconforming use. In permitting such change, the planning commission may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

(4) Discontinuing, moving. If any nonconforming use of a building or structure ceases for any reason for a continuous period of more than two (2) years or is changed to a conforming use or if the building or structure in which such use is conducted or maintained is moved for any distance whatever, for any reason, then any future use of such building shall be in conformity with the standards specified by this ordinance for the district in which such building is located.

If any building or structure in which any nonconforming use is conducted or maintained is hereafter removed, the subsequent use of the land on which such building was located, and the subsequent use of any building or structure thereon, shall be in conformity with the standards specified by the zoning ordinance for the district in which such land or building is located.

(g) Nonconformity, other than use. A building that is conforming in use, but which does not conform to the height, yard, land coverage, parking or loading requirements of the zoning ordinance, shall not be considered to be nonconforming within the meaning of Section 35.1-27. However, no permit shall be issued that will result in the increase of any such nonconformity.

(h) Nonconforming signs. All signs which do not conform with any of the sign regulations of the zoning ordinance, including regulations governing size, height, installation, location, and lighting, shall be deemed nonconforming and may be continued so long as the existing use continues and is not discontinued for more than two (2) years, and so long as the nonconforming sign is maintained in its then structural condition. Except as provided in Sections 35.1-26 through 35.1-26.16.3 (e) whenever a nonconforming sign is enlarged, extended, reconstructed or structurally altered it shall conform to the existing zoning regulations. However, a nonconforming sign may be re-faced without losing its nonconforming status. Whenever a nonconforming sign requires repairs in a dollar amount greater than fifty percent (50%) of the replacement cost of the entire sign such sign shall be brought into compliance with the existing zoning regulations. A nonconforming sign shall not be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming sign.

(i) In order to make repairs to a nonconforming billboard sign, the owner shall make a written request to the commonwealth transportation commissioner as provided in Section 33.1-370.2 of the Code of Virginia and submit the documentation required by 24 VAC 30-120-170. The commissioner shall review the written request and if the commissioner determines that the cost of requested repairs does not exceed a dollar amount greater than fifty percent (50%) of the current replacement cost of the entire billboard sign or structure, the commissioner shall provide the owner of the billboard sign with a letter approving the billboard sign repairs. However, in no case shall a nonconforming billboard sign be replaced or rebuilt if the cost of the replacement or rebuilding exceeds fifty percent (50%) of the current replacement cost. The owner of the billboard sign shall apply for a building permit from the city and provide a copy of the approval letter from the commissioner as part of the application for the building permit. The commissioner's determination as to whether the owner of the billboard sign has complied with this section shall be binding upon the city, unless the city's building official, for good cause shown, submits to the commissioner documentation objecting to the commissioner's determination, within thirty (30) days of the building permit application, with a copy of such documentation being provided to the billboard sign owner. The commissioner shall consider any documentation submitted by the building official and shall reissue a determination in accordance with this section, which determination shall be binding upon the city, unless the city's building official appeals such decision in accordance with the provisions of the administrative process act.

(j) Restoration of damaged building and structures. If any nonconforming building or structure is damaged to an extent of more than fifty percent (50%) of the value of the structure above the foundation, as determined by the division of inspections, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all the regulations of this zoning ordinance for the district in which it is located. If the structure is not restored, it must be removed at the owner's expense within sixty (60) days. Where the destruction of such nonconforming structure is less than fifty percent (50%), as described above, it may be restored in substantially the same location and the nonconforming use continued. Nothing in the zoning ordinance shall prevent the strengthening or restoring to a safe condition of any wall declared to be unsafe by the division of inspections.

If a residential or commercial building is damaged or destroyed by a natural disaster or other act of God, such building may be repaired, rebuilt or replaced to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in Section 35.1-13 of the zoning ordinance. If such building cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the building code and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the flood plain regulations. Unless such building is repaired or rebuilt within two (2) years of the date of the natural disaster or replaced within two (2) years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the owner shall have a total of four (4) years to repair, rebuild or replace said building in accordance with all other regulations listed above.

(Ord. No. O-78-352, 12-12-78; Ord. No. O-87-210, § 1, 9-8-87; Ord. No. O-04-074; 6-22-04; Ord. No. O-05-109, 9-13-05)

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

If a residential or commercial building is damaged or destroyed by a natural disaster or other act of God, the zoning ordinance may require that such building be repaired, rebuilt or replaced to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § [15.2-2310](#). If such building cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ [36-98](#) et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired or rebuilt within two years of the date of the natural disaster or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the zoning

ordinance shall provide for an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this paragraph.

Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

(Code 1950, §§ 15-843, 15-848, 15-968.6; 1962, c. 407, § 15.1-492; 1966, c. 202; 1975, c. 641; 1997, c. 587; 1998, c. 801; 2002, c. 823; 2003, cc. 21, 53, 189; 2004, c. 538; 2006, c. 244.)